Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 02-324
International Settlements Policy Reform	)	
International Settlement Rates	)	IB Docket No. 96-261

REPLY COMMENTS OF ROYAL KPN NV

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Royal KPN NV ("KPN"), by its undersigned counsel and pursuant to the Federal Communications Commission ("FCC" or "Commission") Notice of Proposed Rulemaking released on October 11, 2002, respectfully submits the following reply to the initial comments filed in the above-captioned proceeding.[1]

INTRODUCTION AND SUMMARY

Royal KPN NV is an international telecommunications company, headquartered in the Netherlands, that offers a wide range of high-quality, innovative services for consumers as well as business customers. KPN's mobile communication activities are handled through its subsidiary KPN Mobile NV ("KPN Mobile"), which serves approximately 13.2 million customers in the Netherlands, Belgium and Germany. KPN Mobile also owns German mobile GSM operator E-Plus and Belgian GSM mobile operator Base. KPN is also very active in the United States: its subsidiary KPN International operates a state-of-the-art IP backbone connecting major business and financial centers in Europe and in the United States.

1 *International Settlements Policy Reform; International Settlement Rates*, IB Docket Nos. 02-324 and 96-261, Notice of Proposed Rulemaking, FCC 02-285 (rel. October 11, 2002) (hereinafter "*NPRM*").

The Commission has requested comments on what, if any, measures it should take to address the issue of the rates charged for terminating U.S.-originated calls on foreign mobile networks. It would be inappropriate for the Commission to take any action that directly or indirectly regulates foreign mobile termination rates. Such regulation is properly within the competence and jurisdiction of the local governments in the home markets of foreign mobile operators. Mobile termination rates are a product of unique market conditions that vary from country to country, and are therefore best handled by local governments in each country. Indeed, foreign governments already are taking active steps to address mobile termination rates throughout Europe and Asia. Their efforts are the most effective way to protect the interests of U.S. consumers and carriers, whose interests in this case are wholly aligned with those of consumers in foreign jurisdictions.

Further, the Commission's unilateral adoption of new benchmarks for mobile termination would have little direct impact on foreign mobile termination rates and would be far more likely to harm, rather than help, U.S. consumers and carriers. In the case of foreign mobile termination, U.S. carriers do not have bypass or alternative routing measures available for terminating calls on foreign mobile networks and thus have no leverage for obtaining settlement rates that would comply with any Commission-imposed benchmarks. Compliance with new benchmarks would therefore result in a price squeeze on foreign operators, both fixed-line and mobile, that may compel them to refuse to handle U.S.-originated calls destined for foreign mobile networks. Such refusal would have a minimal impact on foreign carriers' revenue streams, but would effectively disrupt service for U.S. consumers and carriers.

The Commission should instead take steps to raise U.S. public awareness of foreign mobile termination charges, so that U.S. consumers can make informed decisions about their international calling needs. In addition, the Commission should more closely investigate the surcharges U.S. carriers levy on U.S. consumers for terminating calls on foreign mobile networks. These surcharges are well in excess of the wholesale foreign mobile termination charges that the U.S. carriers themselves pay, and reductions in these wholesale rates are seldom passed on to U.S. consumers.

I. FOREIGN MOBILE TERMINATION RATES ARE A LOCAL ISSUE

Several commenters urge the Commission to take direct action against what are perceived to be excessive rates for terminating traffic on foreign mobile networks.[2] This would not be an appropriate step for the Commission to take. As other commenters have noted, the issue of mobile termination rates is a matter that is wholly and properly within the jurisdiction of the local governments in the countries where the mobile carriers operate.[3] In fact, as the Commission is aware, several foreign jurisdictions, including the Netherlands and the European Union, already are addressing this very issue. Therefore, any unilateral action by the Commission on these issues would not be appropriate, and, as discussed below, could even prove more damaging than helpful.

A. Local Governments are Best Situated to Address Issues in Their Respective National Markets

Commenters supporting direct Commission intervention in the regulation of foreign mobile termination rates seem to suggest that a single global market for foreign mobile termination exists. This is simply not true. While foreign mobile markets do have certain elements in common, such as the "Calling Party Pays" ("CPP") principle, the mobile market in each country is unique: a mobile operator in the United Kingdom, for example, must operate under quite different market conditions than a mobile operator in Italy, Japan or Belgium.

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2 *See* Comments of AT&T at p. 30; Comments of WorldCom at p. 17.

3 *See, e.g.*, Comments of Verizon at p. 9; Comments of Cable & Wireless at p. 17; Comments of Vodafone at p. 9; Comments of the Government of Japan at p. 2.

Mobile markets are subject to unique domestic policies, pressures and economic conditions, and are therefore most appropriately regulated by the local governments.

Because different national market conditions result in different costs for public mobile network operations, a determination of whether mobile operators are, or should be, charging cost-based termination rates can only be made on a country-by-country basis. Only local governments are competent to make such a determination. In order to properly address the costs of foreign mobile termination, the Commission would need to conduct a country-by-country analysis that would be enormously resource-intensive and would require information that is not publicly available. A more general "broad-brush" approach by the Commission would ignore the varying market and economic realities of each country.

Foreign governments, on the other hand, have direct, in-depth knowledge and understanding of the operation of their respective domestic telecommunications markets, including mobile networks and services. They have both the expertise and the scope of legal authority necessary to determine whether their mobile operators are charging excessive termination rates and, if so, to take appropriate measures. Just as the FCC is the appropriate agency for regulating the charges levied by local exchange carriers in the U.S. for access to their local networks,[4] the local governments in the home markets of foreign mobile operators are the appropriate fora for regulating the rates they charge for access to their domestic mobile networks.

B. Foreign Governments are Addressing Mobile Termination Rate Issues

Foreign governments already are examining the issues related to the rates charged for mobile termination in their respective countries. As Vodafone pointed out, foreign governments

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4 *See Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (establishing benchmarks for access charges levied by local exchange carriers).

began addressing mobile termination rate issues "long before U.S.-international traffic terminating on foreign mobile networks became an issue of any significance."[5] Australia, Austria, Belgium, France, Norway, Portugal, Spain and Sweden, based on their local needs, have determined that price caps or other regulatory restraints are appropriate measures to address mobile termination rate issues. On the other hand, several other countries, such as Germany, Greece, Ireland and Japan, have found that mobile operators have voluntarily reduced their termination rates without resort to such tactics. In Finland, the mobile termination rates of Sonera, the country's largest mobile operator, have been regulated for almost two years. Most recently, the national regulator in Italy, Europe's largest mobile market, announced on February 5, 2003, that it is ordering fixed-to-mobile termination rates to be cut by 12% effective June 1, 2003, followed by additional cuts of approximately 20% over the subsequent two years.[6] In the Netherlands, both the telecommunications regulator, OPTA, and the Dutch competition authority have been very actively involved in the regulation of mobile termination rates. On February 12, 2003, the competent Dutch Administrative Court heard challenges against OPTA's ruling imposing a two-step reduction of mobile termination rates (intended to take effect over a five-month period) to European "best practice" benchmark levels in preparation for a further reduction (intended to take effect later this year) to a cost-oriented level.[7]

The extent to which foreign regulators are addressing termination rates charged by their mobile operators is well-illustrated in the table provided by Vodafone.[8] As lengthy as Vodafone's table is, it is still only a sample of foreign regulatory action as of November 2002

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5 Comments of Vodafone at p. 9.

6 *See* Press Release of AGCOM, dated February 5, 2003 at http://www.agcom.it/comunicati/cs_050203.htm.

7 *See, inter alia,* the English translation of OPTA's "Modification of the Policy Rules Regarding Regulation of Mobile Terminating Tariffs" (OPTA web site at http://www.opta.nl/download/mta_aanpassing_300902.pdf).

8 Comments of Vodafone, Annex B.

and does not include measures underway in other countries, such as Jamaica and Panama, nor does it include more recent developments, such as those in Italy.

Overall, it is clear that the local governments in overseas markets are addressing the issue of mobile termination rates and are taking measures to address this issue that (1) are appropriately tailored for their respective national markets, and (2) are designed to protect the interests of their own domestic consumers, which, as discussed below, are aligned with the interests of U.S. consumers.

C. The Interests of Domestic Consumers and Fixed-line Carriers in Foreign Markets are Aligned with the Interests of U.S. Consumers and Carriers

In the case of foreign mobile termination rates, the interests of U.S. consumers and carriers are wholly aligned with the interests of domestic consumers and fixed-line carriers in foreign countries.[9] In most countries, mobile termination is charged without regard to whether the incoming call is domestic or international in origin. This means that domestic consumers and fixed-line carriers are subject to the same termination rates as U.S. consumers and carriers when placing a call to a mobile network. Likewise, if a government in a foreign country orders a cut in the mobile termination rates in that country, the cut will apply to calls coming from U.S. customers and carriers as well.

This alignment in interests means not only that foreign governments lack the incentive to discriminate against U.S. consumers and carriers, but they in fact have a significant incentive to undertake measures that protect them. Foreign governments are under enormous public and political pressure from their own constituencies, including powerful advocacy groups for consumers and fixed-line carriers, to ensure that the costs of terminating calls on mobile

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[9] *See, e.g.*, Comments of Vodafone, pp. 9-11.

networks are reasonable and cost-based. This makes these governments, indirectly, the most effective protector of U.S. consumer and carrier interests regarding mobile termination abroad.

II. IMPOSITION BY THE FCC OF NEW BENCHMARKS FOR MOBILE TERMINATION WOULD BE INEFFECTIVE AND COULD ACTUALLY HARM U.S. CONSUMERS

Some commenters urge the Commission to address allegedly excessive foreign mobile termination rates by establishing new, separate benchmarks for foreign mobile termination.[10] However, such a measure would have little direct impact on foreign mobile termination rates and is far more likely to harm rather than help U.S. consumers and carriers.

A. There are No Bypass Alternatives

When the Commission adopted its *1997 Benchmarks Order*,[11] U.S. international carriers had various alternatives, such as refile and re-origination, that provided them with the leverage necessary to obtain settlement rates with corresponding foreign carriers that were at or below the Commission's benchmarks. In this case, however, these alternatives do not exist.

First, as both Sprint and Cable & Wireless noted, foreign mobile operators generally do not correspond directly with U.S. international carriers.[12] Instead, U.S.-originating calls bound for foreign mobile networks are sent to a foreign fixed-line carrier in the destination country, which then passes the call on to the mobile operator. In most cases, the mobile operator is either unrelated to the foreign fixed-line carrier or is operated as a separate profit center. If the Commission were to establish benchmarks, the result would be to put the foreign fixed-line carrier in a price squeeze, requiring it to pay the full termination rate charged by the mobile operator, yet not permitting it to receive full compensation from the originating U.S. carrier. As

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10 *See, e.g.*, Comments of AT&T, pp. 34-36.

11 *In the Matter of International Settlement Rates*, IB Docket no. 96-261, Report and Order, 12 FCC Rcd 19,806 (1997) ("*1997 Benchmarks Order*").

12 Comments of Sprint, pp. 18-19; Comments of Cable & Wireless, p. 18.

a result, foreign fixed-line carriers would be required to incur a substantial loss on each U.S.-originated call they receive that is bound for termination on a mobile network.

Second, mobile operators in most countries charge the same termination rate regardless of whether the incoming call originated from a domestic or international point.[13] The near uniform application of mobile termination rates eliminates the option for a U.S. carrier to refile or re-originate a call bound for a foreign mobile network by making it appear to originate from a domestic or international location. A call originating in the U.S. destined for termination on a mobile network in a foreign country will be subject to the same termination charge regardless of whether the call is routed directly, refiled through a third country, or re-originated through a domestic fixed-line carrier in the destination country. Therefore, no effective bypass alternatives for U.S. international carriers exist.

B. Foreign Operators May Refuse to Accept U.S. Traffic Destined for Foreign Mobile Networks

Unlike the situation that existed at the time of the *1997 Benchmarks Order*, foreign carriers, both fixed-line and mobile, do not face the prospect of losing their entire revenue stream from U.S. inbound traffic if they fail to comply with any benchmarks the Commission might establish for foreign mobile termination. Instead, they could simply refuse to handle any traffic destined for termination on a mobile network. Calls destined for termination on a mobile network are easily identifiable by their number prefix and represent only a small percentage of most fixed-line carriers' overall U.S.-based revenue. In fact, foreign carriers who find themselves caught in the price squeeze described above between Commission benchmarks and the mobile operators' termination charges may well find it more economical to refuse U.S.

[13] *See, e.g.*, Comments of GSM Europe at pp. 5-6. In fact, in several countries the mobile termination rates for internationally-originated calls are *lower* than for domestically-originated calls. *See also* Comments of Vodafone at Annex B; Comments of the Government of Japan, p. 2.

mobile-bound traffic, regardless of the consequences, than to continue incurring losses on each U.S. mobile-bound call.

Likewise, U.S.-originated calls make up only a very small percentage of the total calls terminated by foreign mobile operators on their networks, and the impact on the overall revenue of these operators of no longer terminating U.S. calls would be minimal.[14] Therefore, foreign mobile operators have little or no incentive to either accept these calls at reduced rates or to try to compel fixed-line operators to pass these calls along.

Such action by foreign fixed-line and/or mobile operators would effectively disrupt service for U.S. consumers and carriers, who would find themselves unable to complete calls to foreign mobile numbers. Service disruptions would clearly harm U.S. consumers and carriers and thus are contrary to the public interest. Further, the Commission would be unable to prevent any such service disruptions, because the refusing foreign carriers would be outside of the Commission's jurisdictional reach or authority.

The Commission should therefore refrain from imposing new benchmarks for foreign mobile termination. Such action would be ineffective in decreasing foreign mobile termination rates and instead would create strong economic incentives for foreign carriers to disrupt service to the ultimate detriment of U.S. consumers and carriers.

III. THE COMMISSION HAS ALTERNATIVES FOR ADDRESSING FOREIGN MOBILE TERMINATION RATES

KPN understands that the issue of foreign mobile termination rates is important not only to the Commission, but also to the U.S. government as a whole. For example, U.S. carriers have

[14] Calls originating from the U.S. make up less than 0.5% by volume of all calls terminated on mobile networks in most European networks and an even smaller percentage of all calls terminated on mobile networks in Japan. *See* Comments of Vodafone, p. 8.

also raised this issue before the Office of the United States Trade Representative ("USTR") in their submissions as part of the USTR's proceedings under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 ("Section 1377"), 19 U.S.C. § 3106. Both the Commission and the USTR have been urged to take action to address foreign mobile termination.

While KPN opposes any Commission action to indirectly regulate foreign mobile termination rates, there are still other measures that the Commission can take to protect U.S. consumers. For example, the Commission could take steps to raise U.S. public awareness of foreign mobile termination. Because the U.S. market operates on a "Receiving Party Pays" basis, rather than on a "Calling Party Pays" basis as most other countries do, U.S. consumers are generally unaware that they will be subject to additional charges when calling a foreign mobile number, and bills they receive with these charges often come as a surprise. Although U.S. carriers are obliged to disclose these additional charges, this information is often buried in such a manner that it is not readily apparent to the average U.S. consumer.[15] However, as U.S. consumers become more aware of the extra cost of calling a foreign mobile number, they will be able to make informed decisions about their international calling habits and plans that would enable them to minimize the impact of these rates.

Finally, the Commission should inquire more closely into the surcharges U.S. carriers levy on U.S. consumers for terminating calls on foreign mobile networks. Both Vodafone and NTT DoCoMo demonstrated that these surcharges are well in excess of the foreign mobile termination charges that the U.S. carriers themselves pay.[16] The study and report prepared by the independent consultancy Ovum demonstrates that the surcharges U.S. carriers impose on their retail U.S. customers for terminating calls to foreign mobile networks are significantly higher

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[15] For example, see AT&T's consumer services website at http://www.consumer.att.com.

[16] Comments of Vodafone, pp. 14-15 and Annex C; Comments of NTT DoCoMo, pp. 2-6.

than their actual costs incurred. The difference between the wholesale rates U.S. carriers pay for foreign mobile termination and the retail surcharges they collect for this service from their U.S. customers is magnified by the fact that the wholesale rates are generally calculated on a per-second basis, while the retail surcharges are levied on a per-minute basis. In addition, mobile termination rates have recently been reduced in several countries, but these reductions have not been passed on by U.S. carriers to their U.S. customers.[17] The Commission should therefore give serious attention to the practices of U.S. international carriers when considering how to address foreign mobile termination rates.

CONCLUSION

For the reasons stated above, the Commission should refrain from taking any action to indirectly regulate foreign mobile termination charges.

Respectfully submitted,

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[17] Comments of Vodafone, p. 15 and Annex C.